

APPEAL NO. 010020

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 6, 2000. With regard to the issues before him, the hearing officer determined that the appellant (claimant) sustained an injury in the course and scope of his employment on _____. Additionally, the hearing officer found that because the claimant failed to timely notify his employer of the injury in accordance with the requirements of Section 409.001, the respondent (carrier) was relieved of liability.

DECISION

Reversed and remanded.

At issue in this case is whether or not reporting a work-related injury to a "lead man," as opposed to a "supervisor," is sufficient to satisfy the notice requirements of Section 409.001. Conflicting evidence was presented at the hearing regarding to whom the claimant gave notice of the injury. The claimant testified that he reported the injury on the day it occurred to the lead man, JOK, and the supervisor, JAK. JOK testified that in _____, the claimant told him that he had hurt his back, but did not tell JOK that he had been injured at work or give any details about the injury. Both JOK and JAK testified that JOK's position was not a supervisory position, although according to JOK, he was responsible for directing the claimant's work. JAK recalled that he first learned of the injury on June 22, 2000, when the claimant reported the injury to JJ, but had no recollection of the claimant reporting it to him prior to that time. JAK and JJ, who is JAK's supervisor, both testified that the policy of the company is to report injuries to a supervisor, not to a lead man.

Section 409.001(b)(2) requires that a claimant give notice of an injury to the employer or to "an employee of the employer who holds a supervisory or management position." Conflicting evidence was presented at the hearing regarding whether the claimant simply told JOK that he had hurt his back or whether he reported a work-related back injury. In order to constitute notice of injury to the employer, there must be notice that the injury is work-related. Texas Employers' Insurance Association v. Mathes, 771 S.W.2d 225 (Tex. App.-El Paso 1989, writ denied). Additionally, conflicting evidence was presented regarding whether or not JOK, as lead man, held a supervisory position. Although, testimony was given establishing that the claimant's employer does not consider a lead man to be a supervisor, testimony was also given that JOK directed the claimant's work. In order for a person to be considered as holding a supervisory position for purposes of receiving notice of an injury, it is not necessary to have hiring, firing, and disciplinary authority, rather, task-assigning authority may be sufficient to confer the status of a supervisor. Texas Workers' Compensation Commission Appeal No. 961551, decided September 19, 1999. We also note that Section 409.001(b)(2) does not require that notice be given to a supervisor, rather only to a person "who holds a supervisory . . . position." It is unclear how the hearing officer resolved these key issues. Therefore, we remand for

the hearing officer to make findings with respect to whether the claimant reported a work-related back injury to JOK and whether JOK is considered a person holding a supervisory position. No hearing on remand is necessary.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Kenneth A. Huchton
Appeals Judge